

From: Paul Nicoletti [<mailto:paulnicoletti@gmail.com>]
Sent: Thursday, September 11, 2014 8:04 PM
To: dsw@blancopc.com; Lincoln Herweyer
Subject: Malibu Media LLC v. John Doe subscriber assigned IP address 68.62.41.133 (Shekoski) | 2:13-cv-12217-VAR-RSW | NEMI85-1 -- Expert's Report

FRE 408(a) PROTECTED SETTLEMENT DISCUSSIONS

Derek and Lincoln,

Attached is Plaintiff's expert report. Plaintiff's expert report reveals that Defendant's hard drive contains a peer-to-peer file sharing software and additional evidence of piracy. For your review I am also attaching Defendant's Responses to Plaintiff's First Set of Interrogatories in which Defendant made false statements with regard to Interrogatory Nos. 14, 15, and 21, and further that he never knowingly downloaded a computer file on Limewire. Perhaps even more important is the fact that Defendant failed to "identify each person, including yourself, if applicable, whom you know, at any time in the past, has used BitTorrent or any other type of peer-to-peer file sharing program."

Given Patrick Paige's results, and Defendant's false statements, Plaintiff is certain the infringement emanated from Defendant's home and that the hard drive used to infringe Plaintiff's works has not yet been turned over. Indeed, Joseph Shekoski's purchase of a brand new computer immediately after notification of this suit is a red flag that his previous computer may have been destroyed. If so, proving it will be relatively easy and Plaintiff will seek sanctions against your clients if they intentionally destroyed evidence. Be advised, Plaintiff will be moving to reopen discovery, and to amend its Complaint to add Joseph Shekoski and Amber Shekoski as Defendants. Plaintiff will also add the additional infringements (bringing the total to 36 infringed works). Further, Plaintiff intends on reserving its Subpoena for Deposition Duces Tecum for production of Joseph Shekoski's and Amber Shekoski's hard drives.

With that in mind and my client being sympathetic, as I previously discussed with Lincoln, Malibu has authorized me to resolve this matter confidentially without requiring the Shekoski's to pay money if Mr. Shekoski, Joseph Shekoski and Amber Shekoski sign an

agreement promising not to use BitTorrent to infringe on any of Malibu's copyrighted works. Further, if Malibu's investigator discovers Defendant's IP address is being used to infringe its works again, the offending party would be required to stipulate to a judgment of \$15,000.

This offer is extremely generous. If your client is in agreement with the dismissal of this case, please confirm that I have your consent and I will begin preparing a stipulation of dismissal with prejudice and with each party bearing their own fees. Your response must be received no later than tomorrow at 5:00pm (9/12/2014). If no response is received we will continue to litigate this case as planned. Please advise.

Best Regards,

NICOLETTI LAW, PLC

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